

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

ALAN KREILEIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 1:22-cv-01431-TWP-DML
	)	
STATE OF INDIANA,	)	
	)	
Respondent.	)	

**ORDER DISMISSING PETITION  
AND DENYING CERTIFICATE OF APPEALABILITY**

Alan Kreilein's petition for writ of habeas corpus challenges the revocation of his parole in case number 82D02-0405-00416. He previously challenged this parole revocation in case number 1:19-cv-03780-TWP-MJD. That petition was denied as procedurally defaulted. On July 21, 2022, the Court ordered Mr. Kreilein to show cause why his habeas petition should not be dismissed as successive. Dkt. 4. He responded by filing an amended petition, but again argued the merits of the petition with no mention of permission from the Seventh Circuit to file a successive petition. Dkt. 5. He then moved to dismiss his petition without prejudice because his legal papers were confiscated. Dkt. 6.

**I. Dismissal for Lack of Jurisdiction**

Mr. Kreilein does not contest that his previous habeas petition was decided on the merits. When there has already been a decision in a federal habeas action, to obtain another round of federal collateral review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b)(3). This statute "creates a 'gatekeeping' mechanism for the consideration of second or successive [habeas] applications in the district court." *Felker v. Turpin*, 518 U.S. 651, 657 (1996). It "is an allocation of subject-matter jurisdiction to the court of appeals." *In re Page*,

170 F.3d 659, 661 (7th Cir. 1999) (quoting *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996)), opinion supplemented on denial of rehearing *en banc*, 179 F.3d 1024 (7th Cir. 1999). Therefore, "[a] district court must dismiss a second or successive petition . . . unless the court of appeals has given approval for the filing." *Id.*

Mr. Kreilein's current § 2254 petition must be summarily dismissed for lack of jurisdiction because it is a second or successive action for relief for the same parole revocation, and there is no indication that the Court of Appeals has authorized its filing. If he wishes to pursue his successor claims, he must file a request to do so in the Seventh Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3)(A).

## **II. Certificate of Appealability**

"A state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal." *Buck v. Davis*, 137 S. Ct. 759, 773-74 (2017). Instead, a state prisoner must first obtain a certificate of appealability. See 28 U.S.C. §2253(c)(1). "A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Where, as here, a petitioner's claim is resolved on procedural grounds, a certificate of appealability should issue only if reasonable jurists could disagree about the merits of the underlying constitutional claim and about whether the procedural ruling was correct. *Flores-Ramirez v. Foster*, 811 F.3d 861, 865 (7th Cir. 2016) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Applying these standards, and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing Section 2254 Proceedings in the United States District Courts, and 28 U.S.C. § 2253(c), the Court finds that reasonable jurists would not dispute that

Mr. Kreilein's petition is an unauthorized successive petition. The Court therefore **denies** a certificate of appealability.

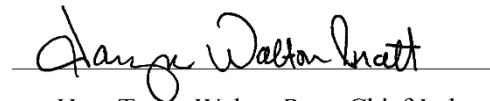
### **III. Conclusion**

Mr. Kreilein's petition is **dismissed** for lack of jurisdiction. Final judgment consistent with this Order shall now issue.

The **clerk is directed** to include copies of dkt. [1] and dkt. [4] with Mr. Kreilein's copy of this Order.

**IT IS SO ORDERED.**

Date: 10/6/2022

A handwritten signature in black ink, reading "Tanya Walton Pratt", is written over a horizontal line.

Hon. Tanya Walton Pratt, Chief Judge  
United States District Court  
Southern District of Indiana

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